

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOSEPH FERLITO

Plaintiff,

-against-

HARBOR FREIGHT TOOLS USA, INC.,

Defendants.

**NOTICE OF REMOVAL**

Case No.

Index No.: 606412/2020

TO: United States District Court  
Eastern District of New York

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and Local Rule 81, the Defendant, HARBOR FREIGHT TOOLS USA, INC. (“Harbor Freight Tools” or “Defendant”), by its attorneys, GOLDBERG SEGALLA, LLP, submit this Notice of Removal from the Supreme Court, State of New York, County of Suffolk, in which the above-captioned matter is now pending, to the United States District Court for the Eastern District of New York. In support of said Notice, Defendant states as follows:

**PROCEDURAL HISTORY**

1. Plaintiff Joseph Ferlito (“Plaintiff”) commenced a civil action in the Supreme Court of the State of New York, County of Suffolk, on or about June 3, 2020 by filing a Summons and Complaint with the Suffolk County Clerk. A copy of that Summons and Verified Complaint is attached hereto as Exhibit “A.”

2. Plaintiff’s Summons and Complaint claims that he has sustained “permanent, severe and serious injuries” and claims damages against Defendant HARBOR FREIGHT TOOLS in an amount “that exceeds the jurisdictional limit of this court for this cause of action in an amount to be determined by a jury.” Exhibit “A,” ¶ 31.

3. The Complaint was served upon the New York Secretary of State on September 14, 2020 and forwarded to Corporate Creations, Harbor Freight Tools' agent for service, on October 1, 2020. *See* Exhibit "B."

4. On October 30, 2020, an Answer was filed on behalf of Harbor Freight Tools USA, Inc. A copy of the Answer is annexed hereto as Exhibit "C".

4. Pursuant to 28 U.S.C. § 1446(a) copies of all process, pleadings and orders are attached hereto.

### **TIMELINESS OF REMOVAL**

5. Plaintiff's Complaint fails to set forth any amount in controversy, nor identify the scope and extent of any alleged injuries. *See* Exhibit "A".

6. On October 30, 2020, Harbor Freight Tools USA, Inc. served a CPLR §3017 demand upon plaintiff. A true and correct copy of the CPLR §3017 demand is annexed hereto as Exhibit "D".

7. To date, plaintiff has failed to respond to Harbor Freight's CPLR §3017 demand.

8. On November 13, 2020, the undersigned contacted plaintiff to confirm that plaintiff received the CPLR §3017 demand.

9. On November 13, 2020, during the undersigned's teleconference with plaintiff, plaintiff advised that he was seeking in excess of \$75,000 due to the injuries he sustained in this action.

14. Based upon the above, it is respectfully submitted that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

15. This Notice of Removal is timely filed, pursuant to 28 § U.S.C. 1446 because it is filed within thirty days of learning of the basis for removal.

### **FACTUAL HISTORY**

6. This action seeks monetary damages for personal injuries allegedly suffered by the Plaintiff arising out of the alleged malfunction of a “Pittsburgh 6 pound splitting maul with fiberglass handle.” See Exhibit “A” ¶ 4.

### **PARTIES/DIVERSITY JURISDICTION**

7. The United States District Court for the Eastern District of New York has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) and (c) because there is a complete diversity of citizenship between the parties.

8. Plaintiff’s Summons states that the residence of the Plaintiff Joseph Ferlito is 34 E. Saltaire Road Lindenhurst, NY 11757. *See* Exhibit “A.” Therefore, the Plaintiff is a resident of the State of New York for diversity purposes.

9. Defendant is a corporation organized under the laws of the State of Delaware, with its principal place of business in Calabasas, California. Thus, Defendant is a citizen of the State of Delaware for diversity purposes.

10. Accordingly, this Court possesses jurisdiction over this matter pursuant to 28 U.S.C. §1332(a)(1) based upon complete diversity of citizenship.

### **ORIGINAL JURISDICTION**

11. Plaintiffs have not specified the amount of damages in its Complaint; however, Plaintiff’s Complaint alleges that the damages sought are in excess of the jurisdiction limits of all lower Courts. *See* Exhibit “A” at ¶¶ 31.

12. During the undersigned's conversations with counsel for Plaintiff on Friday, November 13, 2020, Plaintiff stated that he is seeking in excess of the statutory judicial amount of \$75,000.

14. Based upon Plaintiff's allegations, there is a "reasonable probability that the claim is in excess of the statutory judicial amount" of \$75,000.00. *Mehlenbacher v. Akzo Nobel Salt, Inc.*, 216 F.3d 291, 296 (2d Cir. 2000); *see also Wysokowski v. Roll*, 94 CV 1390, 1995 U.S. Dist. LEXIS 2371, \*10 (N.D.N.Y. Feb. 22, 1995)(the court "may rely upon the pleadings themselves to satisfy the amount in controversy requirement."). Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1) in that it is a civil action between "citizens of different States", and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

15. Based upon this Court's original jurisdiction over this matter pursuant to 28 U.S.C. § 1332, this action may be removed from the State Court pursuant to 28 U.S.C. § 1441(a) and (b).

### **VENUE**

16. Venue is proper pursuant to 28 U.S.C. §1441(a) as the Eastern District is the Federal District Court embracing the place where the state court suit is pending.

### **CONSENT OF ALL DEFENDANTS**

17. Harbor Freight Tools is the sole defendant in this action.

**PROCEDURAL REQUIREMENTS**

18. As required by 28 U.S.C. §1446(d), a notice of the filing of this Notice of Removal and a true copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of Suffolk, as required by 28 U.S.C. § 1446(d).

19. As required by 28 U.S.C. §1446(d), the Defendant will also promptly provide Plaintiff's counsel with written notice of the filing of this Notice of Removal.

**WHEREFORE**, Defendant, HARBOR FREIGHT TOOLS USA, INC., files this Notice of Removal so that the entire State Court Action under Index No. 606412/2020 now pending in the State of New York, Supreme Court, County of Suffolk, be removed to this Court for all further proceedings.

Dated: Garden City, New York  
November 18, 2020

GOLDBERG SEGALLA LLP



TODD R. HARRIS [2857308]  
*Attorneys for Defendant*  
*Harbor Freight Tools USA, Inc.*  
200 Garden City Plaza, Suite 520  
Garden City, NY 11530-3203  
Phone: 516.281.9800

To: Joseph Ferlito  
34 E. Saltaire Road  
Lindenhurst, NY 11757